

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF LOUISVILLE CGSA,)
INC., FOR THE ISSUANCE OF A)
CERTIFICATE OF PUBLIC CONVENIENCE)
AND NECESSITY TO PROVIDE A NEW)
DOMESTIC PUBLIC CELLULAR RADIO)
TELECOMMUNICATIONS SERVICE TO THE)
PUBLIC IN THE GREATER LOUISVILLE)
METROPOLITAN AREA INCLUDING ALL OR)
PARTS OF, JEFFERSON, BULLITT, SPENCER,)
SHELBY, OLDHAM, TRIMBLE, AND HENRY)
COUNTIES IN KENTUCKY AND FLOYD, CLARK,)
AND HARRISON COUNTIES IN INDIANA)

CASE NO.
9048

ORDER DENYING REHEARING AND ESTABLISHING PHASE TWO ISSUES

On July 20, 1984, the Commission issued an Order granting Louisville CGSA, Inc. ("LCGSA"), a certificate authorizing the construction of a cellular telephone system in the Louisville, Kentucky, area. On August 9, 1984, Louisville Telephone Company, CELLNET/Louisville, M-C Partners of Louisville, Cellular Mobile Services of Kentucky, Inc., Metro Mobile CTS, Millicom, Inc., Courier Communications Corporation, Westel-Louisville Company, Ltd., Gencom, Inc., Jeftel Cellular Radio Incorporated, Kentucky Cellular Telephone Company, and Louisville Radiofone, Inc. ("Louisville Telephone"), intervenors in this case, filed an application for rehearing of the July 20, 1984, Order. Therein, Louisville Telephone contended that the Commission erred in granting the certificate without first determining the validity

of LCGSA's proposed corporate and marketing structure. In addition, Louisville Telephone requested an order from the Commission delineating what issues are to be considered at the "phase two" hearing in this matter currently scheduled for September 25, 1984.

On August 23, 1984, LCGSA filed its response in opposition to Louisville Telephone's application for rehearing. Therein, LCGSA emphasized that its corporate and marketing structure is exactly the same as that approved by the Commission in a prior cellular telephone certificate case.¹ LCGSA also stressed that its proposed corporate and marketing structure is similar to what has already been approved by the Federal Communications Commission ("FCC"). In addition, LCGSA also asked the Commission to formally specify what issues are to be considered at the phase two hearing, and requested authority to deviate from the PSC regulation governing the form of notice for the phase two hearing. Finally, LCGSA requested the Commission to overrule Louisville Telephone's pending motion to amend the confidentiality agreement.

Based upon consideration of the above-referenced pleadings and being advised, the Commission finds that:

1. The premise of Louisville Telephone's argument for rehearing is that LCGSA's proposed corporate and marketing structure "provides a screen behind which those entities would be free to engage in cross-subsidization and other predatory and

¹ In re Cincinnati SMSA, Case No. 8916, February 9, 1984.

anti-competitive practices." (Application for Rehearing, pps. 5-6.) Predatory and anti-competitive practices would, by definition, reflect themselves in the rates that a company proposed to charge. Accordingly, the Commission agrees with Louisville Telephone that the issue of LCGSA's proposed corporate and marketing structure should be raised in this proceeding. However, since that issue is primarily related to rates, we believe it is properly raised in the phase two rate proceeding currently scheduled, rather than as a part of the certificate phase of this case. For this reason, the Commission will deny rehearing of the certificate portion of this case, but allow the issue of corporate and marketing structure to be fully explored at the phase two rate hearing on September 25, 1984.

2. By its motion to amend the confidentiality agreement, Louisville Telephone seeks to have its expert witness included in those who may examine the confidential financial data on LCGSA's Exhibit H. LCGSA opposes any amendment to the agreement now on the grounds that it was negotiated in good faith and, in effect, represents a "settlement" of this issue at the time of the hearing. However, it is the Commission's opinion that Louisville Telephone does not require the services of an outside expert in evaluating the material contained on Exhibit H for purposes of preparing direct testimony. Louisville Telephone has experienced and capable attorneys representing it in this proceeding. These persons, who all have access to the confidential material, should be able to prepare any direct testimony related to this exhibit. At the first hearing in this case, Mr. Kirtland (counsel for

Louisville Telephone) conceded that the preparation of direct testimony would not be hampered by limiting access to the confidential data to attorneys: "[T]he mere fact that an expert cannot see these two documents does not mean that I could not put on a witness who could offer effective direct testimony." (June 5, 1984 Hearing, Tr. 33.) Accordingly, the Commission can find no compelling reason to now abridge the confidentiality agreement previously established for this case.

3. Louisville Telephone and LCGSA's request for a delineation of the issues to be raised in the September 25, 1984, phase two hearing will be granted. The issues to be raised at this hearing are (a) the rates and service conditions proposed by LCGSA as reflected in the company's tariff; and (b) the corporate and marketing structure proposed by LCGSA and its effect, if any, on LCGSA's rates.

4. LCGSA's motion to use the newspaper form of notice as set forth in 807 KAR 5:011, Section 8(2)(c), should be granted. Accordingly, the form of notice set forth as an appendix to this Order shall be used by LCGSA.

IT IS THEREFORE ORDERED that Louisville Telephone's application for rehearing of the July 20, 1984, certificate Order be and it hereby is denied.

IT IS FURTHER ORDERED that Louisville Telephone's motion to amend the confidentiality agreement be and it hereby is denied.

IT IS FURTHER ORDERED that the issues to be raised at the September 25, 1984, phase two hearing are (1) the rates and service conditions proposed by Louisville CGSA, Inc., as

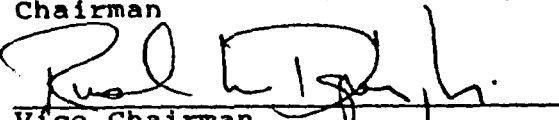
reflected in the company's proposed tariff, and (2) the corporate and marketing structure proposed by Louisville CGSA, Inc., and its effect, if any, on the company's rates.

IT IS FURTHER ORDERED that Louisville CGSA, Inc., shall use the form of notice for the September 25, 1984, hearing as set forth in the Appendix to this Order.

Done at Frankfort, Kentucky, this 29th day of August, 1984.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:

Secretary

APPENDIX

NOTICE OF PROPOSED TARIFF
CELLULAR RADIO-TELEPHONE SERVICE
FOR GREATER LOUISVILLE AREA

The Public Service Commission has ordered that a hearing be held on September 25, 1984, at 9:00 A.M. at the Commission's office, 730 Schenkel Lane, Frankfort, Kentucky, for the sole purpose of receiving evidence concerning the reasonableness of the tariff proposed by Louisville CGSA, Inc., for users of cellular radio-telephone service in the greater Louisville area, when such service is made available there, in late 1984 or early 1985. In addition, the issue of Louisville CGSA's proposed corporate and marketing structure will also be raised at this hearing. A copy of the proposed tariff is available for public inspection by writing Louisville CGSA, Inc., 2030 Powers Ferry Road, Suite 500, Atlanta, Georgia 30339. The rates contained in the tariff are the rates proposed by Louisville CGSA, Inc. However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.

Any corporation, association, body politic or person may by written motion request leave to intervene. Such a motion shall be submitted to the Public Service Commission, at its address above, no later than five days before the hearing date. Intervenor may obtain copies of the application and testimony by contacting Louisville CGSA, Inc., at its address above. This advertisement is the only notice you will receive.